

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JORGE ALEJANDRO VASQUEZ,

Petitioner,

v.

UNKNOWN,

Respondent.

No. 2:24-cv-02818-SCR P

ORDER AND

FINDINGS AND RECOMMENDATIONS

Petitioner, a state prisoner, proceeds without counsel and filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. (ECF No. 1.) Petitioner paid the filing fee.

The exhaustion of state court remedies is a prerequisite to the granting of a petition for writ of habeas corpus. 28 U.S.C. § 2254(b)(1). If exhaustion is to be waived, it must be waived explicitly by respondent's counsel. 28 U.S.C. § 2254(b)(3).¹ A waiver of exhaustion, thus, may not be implied or inferred. A petitioner satisfies the exhaustion requirement by providing the highest state court with a full and fair opportunity to consider all claims before presenting them to the federal court. Picard v. Connor, 404 U.S. 270, 276 (1971); Middleton v. Cupp, 768 F.2d 1083, 1086 (9th Cir. 1985), cert. denied, 478 U.S. 1021 (1986).

After reviewing the petition for habeas corpus, the court finds petitioner has failed to

¹ A petition may be denied on the merits without exhaustion of state court remedies. 28 U.S.C. § 2254(b)(2).

1 exhaust state court remedies on all three grounds for relief. (ECF No. 1.) Petitioner's first ground
2 for relief has not been presented to any state court. (Id. at 7.) Petitioner's second ground for
3 relief is pending before the California Court of Appeal. (Id. at 8.) Petitioner's third ground for
4 relief has not been presented to any state court. (Id. at 10.)

5 There is no allegation that state court remedies are no longer available to petitioner.
6 Accordingly, the petition should be dismissed without prejudice.²

7 Good cause appearing, IT IS HEREBY ORDERED that:

- 8 1. The Clerk of the Court assign a district judge to this case; and
- 9 2. The Clerk of the Court is directed to serve a copy of these findings and
10 recommendations together with a copy of the petition filed in the instant case on the Attorney
11 General of the State of California; and

12 In addition, IT IS HEREBY RECOMMENDED that petitioner's application for a writ of
13 habeas corpus be dismissed for failure to exhaust state remedies.

14 These findings and recommendations will be submitted to the United States District Judge
15 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 21 days after
16 being served with these findings and recommendations, petitioner may file written objections
17 with the court. The document should be captioned "Objections to Findings and
18 Recommendations." Petitioner is advised that failure to file objections within the specified
19 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153
20 (9th Cir. 1991).

21 Dated: November 22, 2024

22
23 
24 SEAN C. RIORDAN
UNITED STATES MAGISTRATE JUDGE

25 ² Petitioner is cautioned that the habeas corpus statute imposes a one-year statute of limitations
26 for filing non-capital habeas corpus petitions in federal court. In most cases, the one-year period
27 will start to run on the date on which the state court judgment became final by the conclusion of
28 direct review or the expiration of time for seeking direct review, although the statute of
limitations is tolled while a properly filed application for state post-conviction or other collateral
review is pending. 28 U.S.C. § 2244(d).